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OFFICE OF PETITIONS

In re Application of :
Kazuhiro Shimawaki :
Application No.: 10/806,257 :
Filed: March 23, 2004 :
Attorney Docket No.: 4468-012A :

ON PETITION

This is a decision on the petition filed October 14, 2004. The petition will be treated under 37 CFR 1.182 in accordance with 37 CFR 1.53(e)(2).

The petition is **granted**.

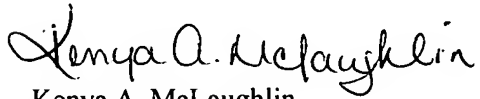
The subject non-provisional application was filed on March 23, 2004. On September 17, 2004, the Initial Patent Examination Division mailed a "Notice of Omitted Items in Non-provisional Application" indicating that the application had been accorded a filing date, but that pages 15-27 of the specification appeared to have been omitted. The notice allowed a non-extendable period for reply of two-months from its mailing date. The instant petition was filed on October 14, 2004, wherein petitioner argued that pages 15-27 of the specification should be considered present on filing because the subject application incorporated by reference the entirety of the prior-filed application 09/712,844.

In view of the incorporation by reference statement found in the first paragraph of the specification, the application will retain the filing date of March 23, 2004, with pages 15-27 of the specification as part of the original disclosure. The examiner assigned to this application will be expected to consider the preliminary amendment and compare pages 15-27 of the specification as filed with the instant petition with pages 15-27 as contained in application 09/712,844 to be sure application 10/806,257 does not contain new matter.

A petition fee of \$130.00 will be charged to deposit account 07-1337. Section 601.01(d) of the *Manual of Patent Examining Procedure* provides, in pertinent part, that "[t]he petition fee (required by 37 CFR 1.53(e)) will be refunded if it is determined that the page(s) were in fact received by USPTO with the application papers deposited on filing." While petitioner has received the benefit of the incorporation by reference statement, petitioner has not established that the omitted pages were deposited with the application papers on March 23, 2004. The Office date-stamped postcard does not properly itemize the number of pages of specification filed with the subject application and does not properly itemize the number of pages of specification included in the copy of the prior-filed application that was also filed. Without such an itemization, it is not possible to determine what was encompassed in the specification of application 10/806,257 or the specification of application 09/712,844. Accordingly, the petition fee of \$130.00 will be charged as it cannot be determined whether pages 15-17 of the specification accompanied the original application papers deposited on March 23, 2004.

The application will be forwarded to the Office of Initial Patent Examination for further processing with a filing date of March 23, 2004.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3222.

A handwritten signature in black ink, reading "Kenya A. McLaughlin". The signature is written in a cursive, flowing style.

Kenya A. McLaughlin
Petition Attorney
Office of Petitions